Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

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Vol. 12 DECEMBER 27, 1978 No. 52

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 78-490)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds) Customs form 7605

The following consolidated aircraft bond has been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: December 6, 1978.

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
Iberia Lineas Aereas De Espana d/b/a Iberia Airlines of Spain, 97-77 Queens Blvd., Rego Park, NY; Federal Ins. Co.[1]	July 1, 1978	Nov. 2, 1978	J.F.K. Airport; $100,000

[1] Surety is Aetna Casualty & Surety Co.

The foregoing principal has not been designated as a carrier of bonded merchandise.

DONALD W. LEWIS
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(T.D. 78-491)

Instruments of International Traffic

Certain steel kegs used for the transportation of ingots of tin and lead designated as instruments of international traffic

It has been established to the satisfaction of the U.S. Customs Service that steel kegs, generally referred to as "pay-off packs," designed for the transportation of ingots of tin and lead which are composed of steel sides and lids with steel-stripped edges measuring 18 inches in diameter by 20 inches in height, are substantial, are suitable for and capable of repeated use, and are used in significant numbers in international traffic.

Under the authority of section 10.41a(a)(1), Customs Regulations, I hereby designate the above-described steel kegs as "instruments of international traffic" within the meaning of section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)). These kegs may be released under the procedures provided for in section 10.41a, Customs Regulations. (103598)

(BOR-7-07)

Dated: December 7, 1978.

J. P. TEBEAU,
Director, Carriers, Drawback and Bonds Division.

[Published in the Federal Register December 13, 1978 (43 FR 58244)]

(T.D. 78-492)

Coastwise Transportation—Customs Regulations Amended

Section 4.81a(b), Customs regulations, amended to add Sweden to the list of nations whose registered non-self-propelled barges may transport merchandise coastwise

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Secretary of State has informed the Secretary of the Treasury that the Government of Sweden permits non-self-propelled (LASH-type) barges of U.S. registry to transport merchandise between points in Sweden in limited circumstances. This document

amends the Customs Regulations to extend reciprocal privileges to LASH-type barges of Swedish registry.

EFFECTIVE DATE: June 22, 1978.

FOR FURTHER INFORMATION CONTACT: Patrick J. Casey, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States, except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. Accordingly, merchandise transshipped from one foreign vessel to another at a point in the United States embraced within the coastwise laws and thereafter unladen at another coastwise point ordinarily would be transported in violation of the statute.

However, Public Law 92–163 (the seventh proviso to 46 U.S.C. 883) excepts merchandise transferred from a non-self-propelled barge of foreign registry to another such barge from the application of the statute if certain conditions are met. If the Secretary of the Treasury, on the basis of information furnished to him by the Secretary of State, finds that the nation of registry extends reciprocal privileges to U.S. barges, he may suspend the application of 46 U.S.C. 883 to merchandise transported between points in the United States which, while moving in U.S. foreign trade, is transferred from a non-self-propelled barge of foreign registry certified by the owner or operator to be specifically designed for carriage aboard a vessel, and regularly carried aboard a vessel in foreign trade, to another such barge owned or leased by the same owner or operator. This exception does not apply to transportation between the continental United States and noncontiguous States, districts, territories, and possessions embraced within the coastwise laws.

The barges referred to ordinarily are described as "LASH-type barges," which are defined in section 4.81(g), Customs Regulations (19 CFR 4.81(g)), as "unmanned non-self-propelled barges specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in the foreign trade."

The provisions of the seventh proviso to 46 U.S.C. 883 are implemented by section 4.81a(a), Customs Regulations (19 CFR 4.81a(a)). The nations which have been found to extend reciprocal privileges to non-self-propelled barges of U.S. registry are listed in section 4.81a(b), Customs Regulations (19 CFR 4.81a(b)).

The Secretary of State has informed the Secretary of the Treasury that in a diplomatic note dated June 22, 1978, the Government of Sweden informed the Department of State that Swedish legislation places no restrictions on the carriage of merchandise by non-self-propelled barges of the type referred to, and under the conditions described, in Public Law 92–163, and requested reciprocity for similar vessels of Swedish registry.

FINDING

On the basis of the information received from the Secretary of State, as described above, I find that the Government of Sweden extends privileges reciprocal to those outlined in Public Law 92–163 to non-self-propelled barges of U.S. registry. Accordingly, the application of section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), to non-self-propelled barges of Swedish registry is suspended, effective as of June 22, 1978.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely implements a statutory requirement, notice and public procedure thereon are unnecessary, and good cause exists for dispensing with the delayed effective date provisions of 5 U.S.C. 553.

AMENDMENT TO THE REGULATIONS

To provide for the reciprocal privileges granted to non-self-propelled barges of Swedish registry, pursuant to the above finding. section 4.81a(b), Customs Regulations (19 CFR 4.81a(b)), is amended by inserting "Sweden" in the appropriate alphabetical order in the list of nations which extend similar privileges to non-self-propelled barges of U.S. registry.

(Sec. 27, 41 Stat. 999, as amended, sec. 14, 67 Stat. 516, Public Law 92–163 (5 U.S.C. 301, 46 U.S.C. 883)).

DRAFTING INFORMATION

The principal author of this document was Mark G. Jenkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: December 6, 1978.

RICHARD J. DAVIS,
Assistant Secretary
(Enforcement and Operations).

[Published in the Federal Register December 18, 1978 (43 FR 58813)]

(T.D. 78-493)

Foreign Currencies—Daily Rates Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
November 27, 1978 through December 1, 1978	$0.609422
Hong Kong dollar:	
November 27, 1978	$0.2085
November 28, 1978	.2080
November 29, 1978	.2078
November 30, 1978	.2080
December 1, 1978	.2078
Iran rial:	
November 27–28, 1978	$0.014150
November 29–30, 1978	.0125
December 1, 1978	.013350
Philippines peso:	
November 27–30, 1978	$0.1367
December 1, 1978	.1365
Singapore dollar:	
November 27, 1978	$0.4510
November 28, 1978	.4533
November 29, 1978	.4545
November 30, 1978	.4558
December 1, 1978	.4517

Thailand baht (tical):

November 27–30, 1978	$0.0500
December 1, 1978	.0496

(LIQ-3-O:D:E)

Date: December 13, 1978.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

(T.D. 78-494)

Foreign Currencies—Variances From Quarterly Rates

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 78-382 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Japan yen:

November 30, 1978	$0.005023
December 1, 1978	.004958

Sri Lanka rupee:

November 27–30, 1978	$0.0670

Switzerland franc:

November 27–28, 1978	$0.576037
November 29, 1978	.580720
November 30, 1978	.576369
December 1, 1978	.576203

(LIQ-3-O:D:E)

Date: December 13, 1978.

BEN L. IRVIN,
ACTING DIRECTOR,
Duty Assessment Division.

Proposed Rulemaking

(19 CFR PART 101)

General Provisions

Proposed changes in the field organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to change the field organization of the Customs Service by: (1) Extending the existing port limits of the Puget Sound, Wash., port of entry to include Renton Municipal Airport and Seaplane Base on Lake Washington; (2) extending the existing port limits of the Buffalo-Niagara Falls, N.Y., port of entry to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, N.Y.; (3) establishing a combined port of entry in Owensboro and Paducah, Ky.; (4) extending the existing port limits of the Providence, R.I., port of entry to include the townships of East Greenwich and North Kingstown, R.I.; and (5) abolishing the present port of entry of South Bend-Raymond, Wash., and extending the existing port limits of the port of entry of Aberdeen, Wash., to include the territory currently encompassed by the port of South Bend-Raymond.

These proposed changes are part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATES: February 12, 1979.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-8151.

278-516—78——2

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, the Customs Service proposes to make the following changes in its field organization:

PUGET SOUND, WASH.

Prior to a recent extension of the port limits of the Puget Sound port of entry, the only place where seaplanes entering the United States in the Pacific Northwest from Canada could be processed by Customs was at Friday Harbor, Wash. Because of the volume of both seaplane and watercraft traffic in the area, an extension of the port limits was necessary to ease the traffic congestion and prevent the possibility of a seaplane and small boat collision. Therefore, on July 14, 1978, T.D. 78–241 was published in the Federal Register (43 F.R. 30288), extending the Puget Sound port of entry to include Kenmore Air Harbor on Lake Washington to provide an alternate site for Customs processing of seaplanes.

The recent increase in seaplane traffic in the Puget Sound area has made it necessary to provide another location where Customs may process seaplanes entering the United States from Canada in the Pacific Northwest. Accordingly, it is proposed to further extend the existing port limits of Puget Sound, Wash., to include Renton Municipal Airport and Seaplane Base, located on the southern end of Lake Washington, to provide for seaplanes comparable services to those available at Kenmore Air Harbor, located on the northern end of the lake, and to provide services to general aviation facilities located there.

As extended, the geographical boundaries of the Puget Sound, Wash., port of entry (region VIII) would include the following: The ports of Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Kenmore Air Harbor (secs. 1, 2, 12, and 13 of T. 26 N., R. 3 E., west meridian, and secs. 1 to 18, inclusive, of T. 26 N., R. 4 E., west meridian), Neah Bay, Olympia, Port Angeles, Port Townsend; Renton Municipal Airport and Seaplane Base (secs. 7 and 18, T. 23 N., R. 5 E., west meridian); and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and

continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street East, then proceeding in an easterly direction along 24th Street East, to it intersection with Meridian Street South, then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the east passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

BUFFALO-NIAGARA FALLS, N.Y.

To meet the expanding needs of the Buffalo-Niagara Falls, N.Y., area, and to provide for the most efficient use of available Customs manpower and other resources, it is proposed to extend the existing port limits of the port of Buffalo-Niagara Falls to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, N.Y.

The proposed expansion would enable Customs to provide service for a ferry operation which transports passengers between Canada and Youngstown, N.Y., located in Porter Township, as well as to private vessels arriving from Canada during the boating season. Service also would be provided for a cruise ship operation that plans to transport passengers from Canada to various places within the United States,

with its first U.S. stop being a location in Porter Township. In addition, service would be provided to a newly created foreign trade zone in Porter and a new warehouse complex located in Lewiston Township.

Presently, the boundaries of the port of Buffalo-Niagara Falls include parts of both Wheatfield and Lewiston Townships in Niagara County. The proposed extension of the port limit of the Buffalo-Niagara port of entry would encompass the entire townships of Lewiston and Wheatfield, as well as Porter, so that the boundaries of the port of Buffalo-Niagara Falls would remain continguous.

As extended, the geographical boundaries of the Buffalo-Niagara Falls, N.Y., port of entry (region I) would include the following:

> All the territory within the corporate limits of the cities of Buffalo, Niagara Falls, Lewiston, Lackawanna, Tonawanda, and North Tonawanda, and the townships of Grand Island, Tonawanda, Amherst, Cheektowaga, Hamburg, West Seneca, and Orchard Park in the county of Erie, and the townships of Porter, Lewiston, Wheatfield, and Niagara, in the county of Niagara, all in the State of New York.

OWENSBORO-PADUCAH, KY.

Presently, Louisville is the only Customs port of entry in Kentucky. To help alleviate an excessive workload in the port and to meet the expanding needs of the importing community in the area, Customs proposes to establish a new combined port of entry in Owensboro and Paducah, Ky.

Owensboro, located near the center of the western Kentucky coal fields, is an established industrial complex in need of increased service. Industries involved with tobacco, aluminum, heavy machinery, leather, rubber, liquor, floral products, and underwear, are located in the area. In addition, the area has excellent highway, water, air, and railroad facilities available for the distribution of finished goods. It is estimated that local industries would present over 1,650 entries annually at a new port of entry.

Paducah, situated where the Tennessee River forms a junction with the Ohio River, is in close proximity to Owensboro. A major part of the Paducah port is designed to handle import and export cargoes, particularly heavy metals and general industrial goods. At present, imported merchandise arriving in the port either must be off-loaded at some point where Customs service is available, or a Customs officer must be detailed from Louisville to Paducah on a temporary basis. Both these options cause delay and increase expenses.

The establishment of a combined port of entry in Owensboro-Paducah will reduce delays and improve service at reduced costs to the importing public. In addition to alleviating considerable incon-

venience to the movement of international traffic in the area, granting of port of entry status to Owensboro-Paducah would aid many local industries to export their products.

The boundaries of the proposed Owensboro-Paducah port of entry would include the following:

> The corporate limits of the cities of Owensboro and Paducah, and (region XI) the connecting highway known as Green River Parkway, south from Owensboro to the junction of the Western Kentucky Parkway, west to U.S. Highway 62, and west to Paducah, all in the State of Kentucky.

PROVIDENCE, R.I.

There has been a substantial increase in the amount of business relating to international trade in the Providence, R.I., area. However, this increase has extended to areas beyond the present limits of the Providence port of entry. Therefore, in the interest of improving service to the importing public, Customs proposes to extend the existing port limits to include the townships of East Greenwich and North Kingstown. The proposed extension would reduce out-of-port service charges to importers located in these townships.

As extended, the geographical boundaries of the Providence, R.I., port of entry (region I) would include:

> All the territory within the corporate limits of the city of Providence and the townships of Central Falls, Cranston, East Providence, Barrington, Pawtucket, Warwick, Woonsocket, Cumberland, Johnston, North Smithfield, Smithfield, Lincoln, West Warwick, East Greenwich, and North Kingstown, all in the State of Rhode Island.

SOUTH BEND-RAYMOND AND ABERDEEN, WASH.

The Army Corps of Engineers no longer dredges the Willapa Harbor Channel in the port of South Bend-Raymond, Wash., leaving the channel unsuited for seagoing vessels. While some activity occasionally may be expected at the port from private boats and fishing vessels, no Customs business has been transacted there for 18 months. Because there is insufficient workload to justify its retention, Customs proposes to abolish the South Bend-Raymond, Wash., port of entry. However, to continue to provide service to private boats and fishing vessels, Customs proposes to extend the port limits of the Aberdeen, Wash., port of entry, to include the territory currently encompassed by the port of South Bend-Raymond.

As extended, the geographical boundaries of the Aberdeen port of entry (region VIII) would include:

> The corporate city limits of Aberdeen, Hoquiam, and Cosmopolis; all the territory within the corporate limits of South Bend and

Raymond; all points on the Willapa River lying between the corporate limits of South Bend and Raymond; and that part of U.S. Highway 101 which connects the city limits of Aberdeen, Hoquiam, and Cosmopolis to the corporate limits of South Bend and Raymond, all in the State of Washington.

If the proposed changes are adopted, the list of Customs regions, districts, and ports of entry in section 101.3, Customs Regulations (19 CFR 101.3), would be amended accordingly.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, room 2335, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

These changes are proposed under the authority vested in the President by section 1 of the act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 comp., ch. II), and pursuant to authority provided by Treasury Department order No. 190, revision 15 (43 F.R. 11884).

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: November 29, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register, Dec. 14, 1978 (43 F.R. 58383)]

(19 CFR Part 153)

Antidumping

Proposed amendments to the Customs Regulations concerning deposit of estimated dumping duties for merchandise subject to a dumping finding and use of best information available.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document advises the public that Customs proposes to amend its antidumping regulations to require the deposit of estimated dumping duties at the time of entry for merchandise subject to a finding of dumping. The manner in which this requirement would be implemented is addressed in the document. The proposed amendments also would provide for the submission of information in antidumping proceedings and specify when and how alternative "best" sources of information would be used if submissions are incomplete or untimely. The proposed amendments further provide that following the issuance of a finding, information necessary for the assessment of special dumping duties must be submitted promptly for entries subject to the finding.

DATES: February 12, 1979.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal aspects: Theodore Hume, 202–566–5476, Office of Chief Counsel; operational aspects: David L. Binder, 202–566–5492, Duty Assessment Division, Office of Operations, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Importers of merchandise subject to a withholding of appraisement notice issued pursuant to section 153.35, Customs Regulations (19 CFR 153.35), and thereafter a finding of dumping issued pursuant to section 153.43 (19 CFR 153.43), are required at the time of entry of the merchandise to post a bond in an amount deemed appropriate by the district director to cover potential dumping liability. However, after a dumping finding, if the importer is found to be related to the foreign producer within the meaning of section 207, Antidumping Act, 1921, as amended (19 U.S.C. 166) ("the act"), and the resale price of the merchandise in the United States is not known at the time of entry, importers are required by section 153.51(b), Customs Regulations (19 CFR 153.31(b)), to post a bond "in an amount equal to the estimated value of the merchandise." The actual payment of dumping duties, however, occurs only after final ascertainment of all duties due.

It is proposed to amend section 153.50, Customs Regulations (19 CFR 153.50). to require importers to deposit estimated dumping duties at the same time the deposit of estimated regular Customs duties is required. The adoption of this procedure would provide substantial assurance that the actual amount of dumping duties assessed would be collected with minimal commitment of resources. This change also should provide a greater incentive for foreign manufacturers to adjust their prices to eliminate dumping margins because a failure to adjust prices would result in the importers having to deposit an additional amount, as well as incurring potential dumping duty liability. In addition, there should be greater incentive for those persons responsible for submitting the data upon which calculations of special dumping duties are based to make timely and complete submissions, because the amount of the deposits may be revised only when adequate data are provided timely.

The proposed amendments would apply to merchandise of a class or kind subject to a dumping finding and entered on or after the date the finding is published in the Federal Register. In the case of merchandise imported under the conditions described in section 208 of the act, estimated dumping duties would be required in addition to the bond. However, a deposit of estimated dumping duties would not be required for importations of merchandise subject to a withholding of appraisement notice and entered prior to a dumping finding. Such merchandise would continue to be subject to the bonding requirements of section 153.51, Customs Regulations (19 CFR 153.51).

Under existing procedures, after the U.S. International Trade Commission ("the ITC") determines that sales at less than fair value cause or threaten injury to a domestic industry pursuant to section 201(a) of the act (19 U.S.C. 160(a)), it so advises the Secretary of the Treasury. The advice is forwarded to Customs for preparation of the formal finding of dumping. If the proposed procedures requiring the deposit of estimated dumping duties become effective, dumping findings would be processed directly in the Department, without referral to Customs. These findings generally would be published in the Federal Register no later than 7 days after the affirmative injury determination is published in the Federal Register by the ITC.

DESCRIPTION OF PROCEDURES

Generally, the amount of the required deposit would correspond to the weighted average margin based upon total sales for a manufacturer as calculated for purposes of the determination of sales at less than fair value pursuant to sections 153.36 or 153.37, Customs Regulations (19 CFR 153.36, 153.37). In the case of a manufacturer not investi-

gated during the fair value phase of the proceedings, the initial deposit required for that manufacturer's entries would be equal to a weighted average of the margins for all manufacturers investigated. If one or more manufacturers investigated were found to have no margins, then a zero margin, appropriately weighted, would be averaged into the deposit calculation for a noninvestigated manufacturer.

The first adjustments to the amounts required to be deposited as estimated dumping duties ordinarily would occur in conjunction with the preparation of the first master lists. A master list is the form by which Customs headquarters advises Customs field officers as to the manner in which the amount of dumping duties, if any, should be determined for a particular entry subject to a dumping finding. To expedite issuance, the first master list questionnaires would be sent to each known foreign manufacturer and related importer of merchandise subject to a finding no later than the time at which a finding is published in the Federal Register. The first master list request would cover all unappraised entries subject to the dumping finding. Manufacturers could, however, prepare their submissions in advance, because general questionnaires would be made available before a finding is published.

A period of 30 days to respond would be provided, with limited extensions in most cases not to exceed 60 days in total. As a general rule, a master list would be issued to Customs field officers no more than 6 months after complete responses were received and a verification, when appropriate, had been conducted.

If the response period does not correspond to a manufacturer's accounting cycle, a prompt issuance of the first master list would be contingent on a waiver by the manufacturer of any claim for adjustments for factors not finally determined at the time of its response (e.g., yearend discounts). Absent a waiver, the estimated dumping duties resulting from margins determined at the conclusion of the fair value phase would be applied until complete responses are received and a master list is issued.

Subsequent master list questionnaires generally would be distributed on an annual basis, with appropriate revisions in the deposit amounts made in the same timeframe. If this schedule does not conform to the manufacturer's accounting cycle, the period of the second, and any subsequent, master list request would be adjusted to correspond to such accounting cycle. In situations where timely data is not supplied to permit updating of master lists, Customs would use the best information available in preparing new master lists and revising the deposit amounts.

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While it would be the general intention to use the fair value results, Customs would consider expediting the first master list preparation and thereby the initial deposit amount in any case where the fair value margin was greater than 10 percent. To implement this approach, foreign manufacturers potentially subject to a finding would have to submit master list information for the period up to the point of the determination of sales at less than fair value. Furthermore, this information must be received no later than 30 days after the determination of sales at less than fair value. Upon receipt, a master list analysis would be considered on an expedited basis to permit, in those instances, a revision of the fair value figures for purposes of the estimated deposits prior to the issuance of the finding. As revised, these figures would be used to determine the first deposit amounts.

This expedited master list procedure would not be considered for a manufacturer if its fair value phase margins were 10 percent or less. In those situations where the fair value phase margins were 10 percent or less, adjustments to the deposit amount would be considered only when the first master list is issued.

It is proposed that where master lists have been issued, the amount of the dumping duty deposit would be based initially upon the experience of the latest master list. If no master list has been issued, then the fair value phase margins would be used. The deposit requirement would apply to all merchandise subject to a finding of dumping as listed in section 153.46, Customs Regulations (19 CFR 153.46), which is entered or withdrawn from warehouse for consumption on or after the effective date of these proposed amendments.

It is intended under the proposed amendments that Customs headquarters personnel would calculate the appropriate amount of the estimated dumping duty required to be deposited. This amount would be determined on a percentage basis for the class or kind of merchandise subject to the finding, with possible different amounts for particular manufacturers. These percentage figures would be distributed to Customs field officers. The field officers, in reviewing the appropriate documents, would advise the importero f the amount required for the deposit to cover the estimated dumping duty, as well as regular Customs duties.

USE OF BEST INFORMATION AVAILABLE

It also is proposed to amend sections 153.31(a) and 153.54, Customs Regulations (19 CFR 153.31(a), 153.54), insofar as they pertain to the use of "best information available." The proposed changes would specifically emphasize that Customs intends to utilize the best information available whenever responses are either untimely or incomplete

and thereby would delay either the fair value investigation or the assessment process.

Under the proposed procedures, Customs would indicate in its request for information the appropriate time within which submissions of data should be made. If submissions are not made within that time period and extensions have not been granted, Customs would proceed to use the best information available. For example, the use of the best information available may mean relying upon previously submitted data without allowances specified in section 202 of the act (19 U.S.C. 161). Similarly, in situations where some alternative method of calculating fair value or foreign market value is available, including cost figures or official reports of a company which can be used to derive appropriate prices or costs, that alternative method could be utilized.

TECHNICAL AMENDMENT

It is proposed to further amend section 153.54 to provide that information necessary for the assessment of special dumping duties shall be submitted for all entries subject to the dumping finding instead of only for entries made from the date of publication of the withholding of appraisement notice to the date of issuance of a finding. The purpose of this change is to clarify that unappraised entries made prior to the date of the publication of the withholding of appraisement notice may be subject to special dumping duties.

AUTHORITY

The authority for the proposed amendments is R.S. 251, as amended (19 U.S.C. 66), section 407, 42 Stat. 18 (19 U.S.C. 173), sections 623, 624, 46 Stat. 759 (19 U.S.C. 1623, 1624), 77A Stat. 14, Tariff Schedules of the United States (19 U.S.C. 1202, general headnote 11).

COMMENTS

Customs invites written comments, preferably in triplicate, on the proposed amendments. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., room 2335, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, other personnel in the Customs Service and the Department of the Treasury assisted in its development.

PROPOSED AMENDMENTS

1. It is proposed to amend paragraph (a) of section 153.31, Customs Regulations (19 CFR 153.31), to read as follows:

153.31 Full-scale investigation.

(a) *Initiation of investigation.*—Upon publication of an "Antidumping Proceeding Notice," the Commissioner shall proceed by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by section 153.32. Customs will indicate in its request for information the appropriate time period within which the submissions of data must be made, If adequate submissions are nor made within the specified time limits, Customs will proceed to use the best information available. To verify the information presented, or to obtain further details, investigations may be conducted by Customs representatives in foreign countries, unless the country concerned objects to the investigation. If an adequate investigation is not permitted, or if any information deemed necessary is withheld, the Secretary will reach a determination on the basis of the best information available. In reaching a determination, the Secretary may utilize cost figures or official reports of a company or companies as necessary to determine appropriate costs or prices.

* * * * * * *

2. It is proposed to amend section 153.50, Customs Regulations (19 CRF 153.50), to read as follows:

153.50 Release of merchandise; bond; deposit of estimated duties.

When the district director, in accordance with section 153.35(c), has received a notice of withheld appraisement or when he has been advised of a finding provided for in section 155.43, and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding unless one of the following conditions is met:

(a) In the case of merchandise subject to a withholding of appraisement notice, the appropriate bond is filed or is on file, as specified in section 153.51.

(b) In the case of merchandise subject to a finding, estimated dumping duties have been deposited in accordance with subpart G of part 141, Customs Regulations (19 CFR, part. 141), and an appropriate bond which may be required by law or regulations is provided; or

(c) The merchandise covered by a specific entry will be appraised without regard to the act.

* * * * * * *

3. It is proposed to amend section 153.54, Customs Regulations (19 CFR 153.54), to read as follows:

153.54 Timely submission of information for dumping appraisement purposes.

Following the issuance of a finding of dumping, information necessary for the assessment of special dumping duties must be submitted as promptly as possible to the Commissioner, in such form as he may require, for entries subject to the finding. The necessary information shall be provided regularly on a periodic basis. Customs will indicate in its request for information the appropriate period for which data is being sought and the time within which the submissions should be made. If adequate submissions are not made within the specified time, Customs will use the best information available. In utilizing the best information available, information previously submitted by the same manufacturer may be used without the allowance of adjustments pursuant to section 202 of the act (19 U.S.C. 161). Also, where an alternative method of calculating the foreign market value (19 U.S.C. 164) or the constructed value (19 U.S.C. 165) is available, that alternative method may be utilized as the best information available where submissions otherwise are deemed inadequate.

R. E. CHASEN,
Commissioner of Customs.

Approved: December 8, 1978.

HENRY C. STOCKELL, JR.,
Acting General Counsel of the Treasury.

[Published in the Federal Register, Dec. 14, 1978 (43 F.R. 58384)]

General Notice

Antidumping—Golf Cars From Poland

Notice of petition filed by American manufacturer, producer, or wholesalers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of petition filed by an American manufacturer, producer, or wholesaler, pursuant to section 516(a) of the Tariff Act of 1930.

SUMMARY: This notice is to advise the public that an American manufacturer has filed a petition alleging that dumping duties with respect to golf cars from Poland are being assessed "at an improperly inadequate rate of duty." Interested persons are invited to submit written comments or views.

DATE: January 17, 1979.

FOR FURTHER INFORMATION CONTACT: Steven P. Kersner, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–2938.

SUPPLEMENTARY INFORMATION: Pursuant to section 516(a) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1516(a)), and section 175.21(a), Customs Regulations (19 CFR 175.21(a)), notice is hereby given that the Commissioner of Customs received on August 8, 1978, a petition filed by AMF, Inc. ("AMF") and its wholly owned subsidiary, Harley Davidson, Inc. ("Harley Davidson"), alleging that the amount of dumping duties assessed on imports of electric golf cars from Poland was too low. AMF and Harley Davidson are American manufacturers of electric and gasoline golf cars which are of the same class or kind of merchandise as the golf cars which are the subject of the dumping findings.

On May 9, 1978, the Customs Service issued a master list which provided the basis for assessing dumping duties on electric golf cars exported from Poland from June 30 through December 31, 1975, in connection with the finding of dumping on such merchandise (T.D. 75–288). Some dumping duties have, as a result, been assessed.

It is asserted by AMF and Harley Davidson that no adjustments should have been made to the sales price by Marathon, the Canadian producer and seller of golf cars, which price was used to establish the

foreign market value of Polish golf cars, in accordance with section 205(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 164(c)). The adjustments made were for economies of scale attributed to the Polish producer, and for an inflation factor. It is also asserted that prices of U.S.-produced golf cars should have been utilized as the basis for computing foreign market value.

Before a decision is made with regard to this petition, consideration will be given to any relevant data, views or arguments submitted in writing. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

Written submissions will be available for public inspection, in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), at the Classification and Value Division, Headquarters, U.S. Customs Service, Washington, D.C., during regular business hours.

This notice is being published pursuant to section 516(a) of the Tariff Act of 1930 (19 U.S.C. 1516(a)) and section 175.21(a), Customs Regulations (19 CFR 175.21(a)).

G.R. DICKERSON,
Acting Commissioner of Customs.

Approved: December 5, 1978.
HENRY C. STOCKELL,
Acting General Counsel of the Treasury.

[Published in the Federal Register, Dec. 18, 1978 (43 F.R. 58877)]

Antidumping—Portland Hydraulic Cement From Canada

Notice of petition filed by American manufacturer, producer, or wholesaler

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of petition filed by an American manufacturer, producer, or wholesaler, pursuant to section 516(a) of the Tariff Act of 1930.

SUMMARY: This notice is to advise the public that an American manufacturer has filed a petition alleging that the U.S. International Trade Commission's issuance of a no-injury determination regarding importations of Portland hydraulic cement from Canada was erroneous, and requesting that antidumping duties be assessed with regard

to such importations. Interested persons are invited to submit written comments or views.

DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT: Steven P. Kersner, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–2938.

SUPPLEMENTARY INFORMATION: Pursuant to section 516(a) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1516(a)), and section 175.21(a), Customs Regulations (19 CFR 175.21(a)), notice is hereby given that the Commissioner of Customs received on October 30, 1978, a petition filed on behalf of the Flintkote Co., Glen Falls Cement Division, alleging that an affirmative determination of injury or threat thereof should be made regarding importations of Portland hydraulic cement from Canada, and that antidumping duties should be assessed against such importations. The petitioner is an American manufacturer of Portland hydraulic cement.

On June 28, 1978, the Secretary of the Treasury determined that imports of Portland hydraulic cement from Canada were being sold at less than fair value in the United States. Accordingly, the case was referred to the U.S. International Trade Commission (USITC) for a determination as to whether the sales made at less than fair value have caused injury or were likely to cause injury to an industry in the United States (43 F.R. 28066). The USITC, on September 25, 1978, issued a no-injury determination concerning the less-than-fair-value sales of Portland hydraulic cement from Canada (43 F.R. 44907).

Petitioner contends that this action by the USITC was "erroneous, contrary to the facts and the law, and abusive of the Commission's discretion." Further, petitioner submits that an affirmative determination of injury or threat therof should be made, and that the Commissioner of Customs should impose dumping duties on such imports of Portland hydraulic cement from Canada.

Before a decision is made with regard to this petition, consideration will be given to any relevant data, views or arguments submitted in writing. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than 30 days from the date of publication of this notice in the Federal Register.

Written submissions will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR

103.8(b)), at the Classification and Value Division, Headquarters, U.S. Customs Service, Washington, D.C., during regular business hours.

This notice is being published pursuant to section 516(a) of the Tariff Act of 1930 (19 U.S.C. 1516(a)) and section 175.21(a), Customs Regulations (19 CFR 175.21(a)).

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: December 5, 1978.

H. C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

[Published in the Federal Register, Dec. 12, 1978 (43 F.R. 58129)]

ERRATUM

In CUSTOMS BULLETIN, volume 12, No. 47, November 22, 1978, T.D. 78–414, page 3, the last sentence of the second paragraph under SUPPLEMENTARY INFORMATION in T.D. 78–414 should read as follows:

> Thus, the first ruling or decision published in 1979 will be designated C.S.D. 79–1, the second C.S.D. 79–2, and so forth.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1218)

THE UNITED STATES *v.* A. JOHNSON & CO., INC., No. 78–11, —F. 2d—

1. Classification of Imports—Flake Iron—Articles—TSUS

Customs Court decision sustaining importer's claim to classification of imported iron flakes as articles not provided for elsewhere in the tariff schedules under item 799.00, TSUS, reversed.

2. Articles, meaning thereof

The word "articles" as used in TSUS may have different meanings in different places dependent on the context in which it is used.

3. Burden of Proof

The importer in a classification case has the dual burden of showing the Government's classification to be in error and its own proposed classification to be correct.

4. Scope of tariff basket provisions

One of the purposes of TSUS was to deemphasize the importance of and restrict the scope of tariff basket provisions.

5. TSUS—Construction—Schedule 6

Schedule 6 of the TSUS was an attempt to comprehensively cover metals and metal products.

6. Legislative Intent

The *Tariff Classification Study* is an aid in determining legislative intent and in interpreting the meaning and scope of terms appearing in the TSUS.

7. Id.—Construction of "Articles" "Products"

The drafters of the TSUS saw a difference between "articles" and "products" in using those terms in TSUS.

8. Id.—Statutory Construction

Titles of parts and subparts of TSUS may not be used in determining legislative intent.

9. Id.—Other Articles of Iron—TSUS

Cathodic iron flake is properly classifiable as other articles of iron under item 657.20, TSUS

U.S. Court of Customs and Patent Appeals, December 7, 1978

Appeal from U.S. Customs Court, C.D. 4737

[Reversed]

Barbara Allen Babcock, Assistant Attorney General, *David M. Cohen*, Chief, Customs Section, *Joseph I. Liebman* for the United States.

Rivkin, Sherman and Levy, attorneys of record, for appellee, *Joseph S. Kaplan, Dorothy P. Watson*, of counsel.

[Oral argument on November 1, 1978 by Joseph I. Liebman for appellant and by Joseph S. Kaplan for appellee]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, and MILLER, *Associate Judges*.

RICH, Judge.

[1] This appeal by the United States is from the judgment of the U.S. Customs Court, 80 Cust. Ct.——, C.D. 4737, 450 F. Supp. 247 (1978), upon remand from our prior decision reported at 64 CCPA 164, C.A.D. 1196, 559 F. 2d 16 (1977), sustaining the importer's alternative classification. We reverse.

The merchandise in issue is described in our earlier opinion, 64 CCPA at 165:

> The imported merchandise is invoiced, inter alia, as "Mairon Electolytic Iron Flake," "Mairon" being a proprietary name by which we shall hereinafter identify the merchandise imported. Mairon is produced from a solid, zinc-ore residue by reducing the iron content thereof to molten pig iron, casting the pig iron to form an iron anode, and electrolyzing the anode in an electrolytic cell having a stainless steel cathode. During electrolysis, the relatively impure iron anode is dissolved and its iron content is plated out in highly pure form on the cathode. The pure iron plating is removed from the cathode and physcially broken up to produce Mairon, an iron product of more than 99.9% purity in the form of flat, irregular fragments generally less than 2 inches across and about one-fifth of 1 inch thick. Mairon's high purity makes it particularly useful in alloying applications employing vacuum or other melting techniques which do not permit further purification.

The "Mairon" flake was exported from Japan in 1969 and 1970 and was classified in liquidation under item 657.20 of the Tariff Schedules of the United States (TSUS), as modified by T.D. 68–9, as other articles of iron dutiable, depending on date of entry, at either

13 or 15 percent ad valorem. On remand below, Johnson successfully contended that the "Mairon" is classifiable under the TSUS ultimate basket provision, item 799.00, and not under item 657.20 as contended by the Government.

Statutory Provisions

The relevant statutory provisions read:

Tariff Schedules of the United States

SCHEDULE 6.—METALS AND METAL PRODUCTS

* * * * * * *

PART 2.—METALS, THEIR ALLOYS, AND THEIR BASIC SHAPES AND FORMS

* * * * * * *

Subpart B.—Iron or Steel

Subpart B headnotes:

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms * * *.

* * * * * * *

Classified and urged by the United States:

PART 3.—METAL PRODUCTS

* * * * * * *

Subpart G.—Metal Products Not Specifically Provided For

Subpart G headnotes:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

Articles of iron or steel, not coated or plated with precious metal:

* * * * * * *

Other articles:

* * * * * * *

657.20	Other	15% ad val. (for merchandise imported in 1969); 13% ad val. (for merchandise imported in 1970).

Claimed and held below:

SCHEDULE 7.—SPECIFIED PRODUCTS: MISCELLANEOUS AND OTHER NONENUMERATED PRODUCTS

* * * * * * *

PART 14.—NONENUMERATED PRODUCTS

	Any article, not provided for elsewhere in these schedules:	
*	* * * * * * *	
799.00	Other	8% ad val. (for merchandise imported in 1969); 7% ad val. (for merchandise imported in 1970).

Proceedings Below

This appeal brings these same parties before us for the second time concerning the issue of proper classification for the subject merchandise. On the first occasion, *United States* v. *A. Johnson & Co.*, 64 CCPA 164, C.A.D. 1196, 559 F. 2d 16 (1977), we reversed the decision of the Customs Court, 76 Cust. Ct. 155, C.D. 4650, 417 F. Supp. 1026 (1976), which had held the merchandise classifiable under the chemicals schedule of TSUS in item 415.50, as modified by T.D. 68–9, and remanded the case of determination of the merits of any unadjudicated claimed classification. In the original action before the Customs Court, the importer had alternatively argued for classification under the ultimate basket provision of TSUS, item 799.00. Without permitting the parties to provide additional briefing on the issue,[1] the Customs Court considered that claim upon remand and decided in favor of the importer, holding the merchandise properly classifiable under item 799.00.

In explanation of its holding, the Court relied on the findings in the earlier action, stating that:

> In C.D. 4650 this Court rejected classification of the imported merchandise under item 657.20 because the imported iron fragments are not *articles of iron* as they of necessity would have to be in order to be classifiable in part 3 of schedule 6 of the TSUS. The court found the merchandise to be iron in a primary form although not provided for in that particular form in part 2 of schedule 6 of the TSUS. In this court's view neither of these

[1] Both parties claim to have requested permission to file supplemental briefs on remand. The Customs Court declined to receive any additional briefs, observing that:

> Inasmuch as the appellate remand was for *determination* of the unadjudicated claim rather than for *further proceedings* in the case this court is disposing of the alternative claim on the basis of the existing record which the court regards as being sufficient for such purposes, as did apparently the Court of Customs and Patent Appeals. [80 Cust. Ct. at ——, 450 F. Supp. at 247, emphasis in original.]

The record now before us is entirely adequate to decide this case.

findings was disturbed by the holding of our appellate court in C.A.D. 1196. * * *

* * * * * * *

The court continues to believe in the soundness of its previous findings in C.D. 4650 concerning the primary nature of the imported iron fragments. Moreover, if Congress had intended to deal specifically with electrolytic iron in the TSUS there is persuasive evidence in the legislative history of the TSUS of Congress' awareness; (1) Of the commercial existence of electrolytic iron, and (2) of the treatment of that material as a primary form of metal under a tariff classification system said to have been relied upon by the framers of the TSUS in the "arrangement of the proposed revised schedules." See *Explanatory Notes to the Brussels Nomenclature* (1955), page 662, where, under the heading 73.06 dealing, among other things, with blocks, lumps, and similar forms of iron or steel, it is stated, "This includes electrolytic iron produced in any form and broken into pieces and imported as such;" and compare this with the definition of "*unwrought*" contained in headnote 3(a) of part 2 of schedule 6 of the TSUS wherein that term is defined as "the term '*unwrought*' refers to metal, whether or not refined, in the form of * * * blocks, lumps * * * and similar primary forms * * * ."

Thus, since the iron fragments at bar are unquestionably a primary form of iron which does not respond to the tariff concept of *articles of iron*, and cannot, under the law of this case, be classified under the chemicals schedule, it follows that this merchandise is classifiable as alternatively claimed by the plaintiff under the residual provision in item 799.00 for articles not provided for elsewhere in these schedules, and the Court so holds. [80 Cust. Ct. at ——, 450 F. Supp at 248, footnote omitted, italic in original.]

Appellant's Arguments

The Government argues that the Customs Court erred in finding that "Mairon" is insufficiently advanced in form to qualify as an "article of iron" within the meaning of item 657.20. The assertion is that the word "article," as used in that provision, is broad enough to include basic materials and no clear evidence of a legislative intent exists to limit its scope. Appellant also calls attention to the presumption of correctness of the Government's original classification, and in this respect, appears to question whether the Customs Court gave any weight to the presumption.[2]

OPINION

The resolution of this case depends on the meaning of the word "article" as it appears in TSUS item 657.20. This word is used ex-

[2] The Customs Court stated that "this presumption must, in the Court's opinion, be measured against the unadjudicated claim under item 799.00." 80 Cust. Ct. at ——, 450 F. Supp. at 247. We think it beyond question that, in light of this statement, the Customs Court gave proper weight to the presumption of correctness. The Court held that it had been overcome.

tensively throughout TSUS. [2] In some instances it is used as a synonym for "thing" and embraces any importation,[3] and in other contexts it takes on a narrower meaning such as that urged here by appellee, namely, a manufactured thing or product.[4] Part 13 of schedule 7, containing the claimed classification, provides for "any *article* not provided for elsewhere in these schedules." (Italic ours.) Part 3, subpart G, of schedule 6, containing the classification assigned upon liquidation, and urged here by appellant, provides for "*articles* of iron" (italic ours). Unless the meanings of the word "article[s]," as it is used in the above quotations, are different, the claim of appellee, successful below, must fail. See *Lussky, White & Coolidge, Inc.* v. *United States*, 21 CCPA 201, T.D. 46727 (1933). If "article" has the same meaning in items 657.20 and 799.00, the importation is most specifically described by the former, which identifies its component material. TSUS general headnote 10(c) would then be controlling. It reads in pertinent part:

> 10. *General Interpretative Rules.*—For the purpose of these schedules—
>
> * * * * * * *
>
> (c) an imported article which is described in two or more provisions of the schedules *is classifiable in the provision which most specifically describes it* * * *. [Italic ours.]

[3] The burden of proof in classification cases is on the importer. 28 U.S.C. 2635 (1977). It is a dual burden of proving that the assigned classification was erroneous and that the claimed classification is correct. *Hayes-Sammons Chemical Co.* v. *United States*, 55 CCPA 69, C.A.D. 935 (1968); *Atlantic Aluminum & Metal Distributers, Inc.* v. *United States*, 47 CCPA 88, C.A.D. 735 (1960). Here the burden is on appellee to show that Congress intended a narrow meaning to apply to the use of the word "articles" in TSUS item 657.20. This burden has not been met.

The argument of appellee is based almost entirely on its analysis of schedule 6, the metals schedule of TSUS. Its contention is that Congress organized schedule 6 in an orderly manner, evidenced by its division into parts according to the degree of advancement of the

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[3] *See*, e.g., TSUS general headnote 1. We also note that at the top of each page in the TSUS the word "article" appears above the column identifying the various importations there listed.

[4] One example of the use of "articles" in a narrower sense appears in the superior heading to TSUS items 533.11 to 533.77:

> Articles chiefly used for the preparing, serving or storing food or beverages, or food or beverage ingredients:

It is clear from the context that "article" is here used to refer to manufactured products as opposed to basic forms or raw materials.

metal.[5] Appellee's assertion is that this fact, together with an examination of the predecessor to item 657.20,[6] mandate that headnote 1 of subpart B of part 2 of schedule 6—that iron itself and the so-called basic shapes and forms of iron are covered therein—be taken literally and that these forms should not be classified together with the metal products described in part 3. Since "Mairon" flake is a basic form of iron,[7] appellee claims that it cannot be classified under part 3 of schedule 6 in item 657.20, leaving item 799.00 as the only possible classification.

While we are in general agreement with the observations of appellee and the Customs Court concerning the organization of schedule 6, we cannot agree with their conclusions. Appellee would have us resolve a dispute over a metal importation by denying it classification in the metals schedule of TSUS in favor of inclusion in a nonenumerated basket (indeed, the basket of baskets) provision. **[4]** One of the purposes of TSUS is to deemphasize the importance and restrict the scope of basket provisions.[8] "United States Tariff Commission Tariff Classification Study Submitting Report," part II(E)(4), at 15–16 (1960); *American Express Co.* v. *United States*, 61 Cust. Ct. 207, 213, C.D. 3573, 290 F. Supp. 778 (1968), aff'd, 57 CCPA 100, C.A.D. 985, 426 F. 2d 383 (1970).

[5] Furthermore, with regard to schedule 6, the metals schedule, TSUS was an attempt to comprehensively cover metals and metal products. The "Tariff Classification Study" is an aid in determining legislative intent. *Rifkin Textiles Corp.* v. *United States*, 54 CCPA 138, C.A.D. 925 (1967), cert. denied, 389 U.S. 931 (1967). According to the "Tariff Classification Study:"

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[5] Schedule 6 is arranged as follows:

Part:

1. Metal-bearing ores and other metal-bearing materials.
2. Metals, their alloys, and their basic shapes and forms.
3. Metal products.
4. Machinery and mechanical equipemnt.
5. Electrical machinery and equipment.
6. Transportation equipment.

[6] The predecesor to item 657.20 is par. 397 of the Tariff Act of 1930. It was the basket clause in the metals schedule of that act.

[7] In the original action before the Customs Court, the Court decided that "Mairon" is a basic or primary form of iron. 76 Cust. Ct. at 156, 417 F. Supp. at 1028. We do not think this can be seriously disputed.

[8] If we were to follow appellee's urging, and place this importation in the ultimate basket of TSUS, we would seriously undermine this purpose of TSUS. As appellee itself points out, paragraph 397 of the Tariff Act of 1930, note 6 supra, "had come to incorporate such a hodgepodge of tariff classifications that it took no less than 219 separate TSUS item descriptions to sort them out." (See "Tariff Classification Study," schedule 6 (1960) at 132, 232-33, 291, 317, 331). We fail to see how our acting to create a similar hodgepodge of tariff classifications in TSUS item 799.00 would serve any purpose other than to create new problems such as those which caused the overhaul of the Tariff Act of 1930.

> Despite the importance of metals and metal products, the existing provisions therefor are disorganized, fragmentary, and in major respects of uncertain application with the result that they are involved in many classification disputes and litigation. *The existing* provisions have been assimilated into schedule 6 in an orderly, systematic manner. [*Id.*, schedule 6—Metals and Meta Products, Explanatory Notes, at 2 (1960), italics ours.]

The message is clear; the intent was to classify *all* metals in the same place in order to avoid the problems encountered under the Tariff Act of 1930. The plan to cover all metals in schedule 6 is controlling over any subsidiary plan to give order to the items by subdivision of that schedule. To read the word "article" in the manner suggested by appellee would surely defeat this intent.

[6] The "Tariff Classification Study" is useful for the purpose of resolving questions relating to the meaning and scope of terms appearing in TSUS as well as in determining the intent of Congress. *Rifkin Textiles Corp.* v. *United States*, *supra*. The explanatory notes to part 3 of schedule 6 in the "Tariff Classification Study" shed some light on the present controversy. In explaining the breadth of schedule 6, part 3, the study says (at 174):

> This part is divided into seven subparts each of the first five of which treat with more or less related *products*, the sixth of which deals with miscellaneous metal *products*, and the last of which covers *articles* of metal not specially provided for. [Italics ours.]

[7] Thus a difference was seen between "products" and "articles" by the drafters of TSUS.[9]

Appellee argues that Congress did not intend basic shapes and forms to be classified with products and advanced forms. This argument is unavailing. While this arrangement is generally followed, examination of schedule 6 shows that basic forms are found in part 3, while some fairly advanced forms are found in part 2.[10] **[8]** In any event, this supposed intent of Congress is derived from examination

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[9] In this regard, we note that the superior heading to TSUS items 607.01–607.04 recites "Iron or steel *products*," and indicates that products may be found in pt. 2, subpart B, contrary to appellee's statement in its brief that "*part 3* [Italic ours.] See note 10 infra.

[10] Some fairly advanced forms of iron may be classified in pt. 2, subpart B of schedule 6, including coated or plated flat wire (items 609.25–609.27), round wire (items 609.40–609.45), steel pipe (items 610.30–610.52), pipe and tube fittings (items 610.62–610.81). As appellant indicates, such forms are at least as advanced as steel shavings (item 652.45) and steel wool (item 652.50) which are found in pt. 3 of schedule 6. This court, in *Commercial Shearing & Stamping Co.* v. *United States*, 59 CCPA 203, C.A.D. 1067, 464 F. 2d 1043 (1972), held a fabricated pressure tank head classifiable in pt. 2, subpart B of schedule 6.

of the titles of parts and subparts of schedule 6, contrary to the prohibition *found in general interpretative rule* 10(b).[11]

In view of the foregoing, we do not find that the word "article," as used in TSUS item 657.20, has such a narrow meaning that the "Mairon" flake cannot be properly included therein. [9] Accordingly, item 657.20 and not item 799.00 most specifically describes the subject importation, and application of general headnote 10(c) requires that the "Mairon" flake be classified under item 657.20 TSUS as modified by T.D. 68–9. The judgment of the Customs Court is *reversed.*

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[11] Rule 10(b) states:

For the purposes of these schedules—

* * * * * * *

(b) the titles of the various schedules, parts, and subparts and the footnotes therein are intended for convenience in reference only *and have no legal or interpretative significance.* [Italic ours.]

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4779)

PISTORINO & CO., INC. *v.* UNITED STATES

Beam cutting machines

Where plaintiff failed to establish that imported electrohydraulic beam cutting machines belonged to a class or kind of merchandise commonly known as shoe machinery, considering all pertinent facts and circumstances, the merchandise was properly classified by customs as machines not specially provided for and parts thereof under item 678.50, TSUS, and was not classifiable under item 678.10, TSUS, as shoe machinery and parts thereof, as claimed.

Court Nos. 73-10-02910 and 74-9-02446

Port of Boston

[Judgment for defendant.]

(Decided November 29, 1978)

Doherty and Melahn (*Walter E. Doherty, Jr.* of counsel) for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*David Ostheimer* and *Bruce M. Mitchell*, trial attorneys), for the defendant.

RAO, Judge: This consolidated civil action involves the classification of beam cutters or beam cutting machines and parts, manufactured by "Fipi" or "Atom" of Italy, imported from 1972 to 1974 and entered at the port of Boston, Mass. for the account of Hudson Shoe Machinery Co. The merchandise was invoiced as models F59, F63, F79S, and G88S electrohydraulic beam cutting machines or electrohydraulic beam presses.

On entry, the merchandise was classified by the district director under item 678.50, Tariff, Schedules of the United States as modified by T.D. 68-9, as machines not specially provided for, and parts thereof, and assessed with duty at the rate of 5 percent ad valorem.

The importer claims that the merchandise is properly classifiable under item 678.10, TSUS, as shoe machinery and parts therefo, duty free.

The pertinent statutory provisions are:

Tariff Schedules of the United States

GENERAL HEADNOTES AND RULES OF INTERPRETATION

10. *General Interpretative Rules.*—For the purposes of these schedules—

(e) in the absence of special language or context which

* * * * * * *

otherwise requires—

(i) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the, use in the United States at, or immediately prior to the date of importation, of articles of that class or kind to which the imported articles belong, and the controlling use is the chief use, i.e., the use which exceeds all other uses (if any) combined;

* * * * * * *

Schedule 6, Part 4, Subpart H.—Other Machines

	Classified under:	
678.50	Machines not specially provided for, and parts thereof	5% ad val.
	Claimed under:	
678.10	Shoe machinery and parts thereof	Free.

The parties have correctly stated the issue to be whether the imported merchandise, at the time of importation to the United States, belonged to a class or kind of articles chiefly used as shoe machinery; item 678.10, TSUS, being controlled by chief use.

At the onset, the court granted plaintiff's motion to incorporate the record of *C. H. Powell Co.* v. *United States*, 63 Cust. Ct. 302, C.D. 3912 (1969), into the record of the instant case. That case involved a Pedersen rapid beam cutting press and parts imported from Denmark in 1963 and 1964.

The plaintiff's evidence, consisting of the testimony of three witnesses and the introduction of three exhibits into evidence, established that the imported merchandise is sold to shoe manufacturers, with a small proportion being sold to companies that use the beam cutters to cut waxed paper, to cut material for baseball caps, to cut felts for buffing wheels and to cut materials for baseball gloves.

The imported machines have a bed dimension ranging from 16 by 59 inches to 30 by 79 inches and cutting plates ranging from 16 by 16 by 2 inches to 20 by 20 by 3 inches. The maximum cutting pressure is 20–25 tons. To cut material on these machines, the operator places a die on the material or materials to be cut, brings the trolley or cutting beam over the die, presses two buttons and holds them while the head comes down. The head strikes the die, cutting the material and then goes away from the material so that the die can be repositioned for a further cut. The dies range in size from 12 to 24 inches and are not imported with the machines under consideration.

The brochures through which the cutting presses are advertised and sold refer to the imported merchandise as "hydraulic beam cutting press[es]" and as "the finest hydraulic cutting equipment." The brochure also states that the Atom G888 "easily handles such items as soles, foam and plush type materials." There was also testimony that the machines cut numerous materials including manmade fabrics, vinyl-coated materials, cardboard and other materials of that nature, and are used to cut multiple layers of materials from single ply to 24 ply. It is plaintiff's position that the imported beam cutters are chiefly used in the shoe industry and that they constitute a class of beam cutters used as shoe machinery.

Defendant relied on the testimony of three witnesses and the introduction into evidence of seven exhibits. Its evidence tended to

establish that the imported beam cutters are similar in all material respects to beam cutters manufactured in the United States and used as general purpose beam cutters, and that during the period of importation, such machines were used in many industries to cut many articles for a variety of industries, including the automotive, electronic, toy, and clothing industries. At this time, according to defendant's witnesses, the shoe industry did not use more than 50 percent of the cutting dies manufactured by the Boston Die Cutting Co. and Novelty Die Corp., both manufacturers of cutting dies for a variety of industries, including the shoe industry. Each of defendant's witnesses, with a number of years of experience in the beam cutting industry, was of the opinion that the imported beam cutters belong to a general class or kind of beam cutting machinery.

In addition, there was testimony that the imported machines could replace and be replaced by domestically manufactured beam cutters that are considered to be general purpose beam cutters.

When chief use is in dispute, it is a question of fact to be determined on the basis of positive testimony. *L. Tobert Co.* v. *United States*, 41 CCPA 161, C.A.D. 544 (1953). All of the pertinent facts and circumstances must be looked to to determine whether the imported machines belong to a special class or kind, commonly known as shoe machinery. *United States* v. *Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, cert. denied, 429 U.S. 979 (1976); *Pistorino & Co.* v. *United States*, 81 Cust. Ct. ——, C.D. 4774 (1978). The factors which have been considered important in this determination include the general physical characteristics of the merchandise; the expectations of the ultimate purchasers; the channels, class or kind of trade in which the merchandise moves; the environment of the sale and the manner in which the merchandise is advertised and displayed; the use, if any, in the same manner as merchandise which defines the class; the economic practicality of so using the import; and the recognition in the trade of this use. *See United States* v. *Carborundum Co., supra; Pistorino & Co.* v. *United States, supra;* and the cases cited therein.

In examining the physical characteristics of the imported merchandise, we find that there is little to set it apart from other beam cutters which are used as other than shoe machinery, that is, as general purpose beam cutters. A comparison of the brochures depicting the imported merchandise and the brochures depicting the domestically manufactured "Model M 'Hercules' Traveling Head Die Press" and the "Ormont Hydraulic Die Press" reveals more similarities than disparities. All have cutting table surfaces of approximately the same dimensions, cutting heads of approximately the same size, and all have a cutting stroke of about 4 inches. Although the cutting

stroke of the imported merchandise is listed as being 3¼ inches, the significance of this difference was not demonstrated by plaintiff.

The maximum pressure of the imported machines is listed at 25 tons, that of the "Ormont Hydraulic Die Press" is listed at 30 tons and that of the "Model M 'Hercules' Traveling Head Die Press" at 25–50 tons. It was plaintiff's testimony, through its witness, Hank Kent, that a machine for cutting foam rubber would require a high tonnage pressure of 40 to 45 tons, which would be beyond the capability of the imported merchandise. However, there was testimony that the instant machines do cut foam rubber sole linings satisfactorily, and, indeed, the brochure for the G888 states that it "easily handles such items as soles, foam, and plush-type materials."

The evidence as to the expectations of the ultimate purchasers was sparse and can perhaps best be garnered from the method in which the machines are advertised, since generally merchandise is advertised in a manner calculated to fill or meet the expectations of potential purchasers. The brochures for the beam cutters do not refer to them as shoe machinery, nor do they allude to any particular feature of the merchandise that would distinguish it from the general class of beam cutters, or put it in a special class of beam cutters susceptible of use principally in the shoe industry. The brochures also refer to the ability of the beam cutters to handle foam and plush materials as well as soles, without limitation to those foams and plush materials used in the shoe industry.

Additionally, the Hudson F63 is also advertised in various issues of Diemaking Diecutting and Converting, a publication purporting to cover the diecutting field. On page 26 of the May–June, 1973 issue, the primary use areas for this machine are listed as textiles, plastics, foam goods, rubber, et cetera. The F59 is listed as being primarily used in footwear, textiles, and all types of multiply cutting. The F79S is listed as being used primarily in the garment trade, packaging, foam and plastic cutting areas. In the May–June, 1972 issue of the same periodical on page 22, the G888 is listed as being used primarily in the textiles, leather and plastics industries, with no mention being made of its use in the shoe industry. In the May–June, 1974 issue on page 16, the F63 is listed as being used primarily in the textiles, plastics, farm goods, and rubber industries; the F59 is listed as being used primarily in the footwear, textiles industries as well as for all types of multiply cutting. Finally, the F79 is depicted as being primarily used in the garment trade, packaging, and foam and plastics cutting trades. These issues of Diemaking Diecutting and Converting cover the period in which the instant merchandise was imported.

Since the Hudson Shoe Machinery Co. provided the information about its machines for the publisher of this magazine, it is clear that it was expecting to appeal to industries other than shoe manufacturing.

The channels, class or kinds of trade through which the merchandise moved would also indicate that the machines are general purpose beam cutters. They are seen at trade shows where general purpose beam cutters are on exhibition. In factories in the United States, they are seen next to domestically manufactured beam cutters that are admittedly general purpose beam cutters. They replace and can be replaced by domestic beam cutters that are general purpose beam cutters, and they are considered competitive with domestic beam cutters that are general purpose beam cutters.

Although plaintiff introduced evidence that more than 80 percent of the imported machines were used by the shoe industry, it did not demonstrate satisfactorily that the chief use of this class or kind of merchandise is in the shoe industry. Defendant proved, through the testimony of witnesses, that the imported beam cutters belong to a general class of beam cutters used by a variety of industries including the garment industry, toy manufacturing, craft companies, and manufacturers of baseball hats and gloves, among others, and that the use by shoe manufactureres did not exceed all other uses.

Plaintiff did not establish that the imported beam cutters were economically impractical of use other than as shoe machines. Indeed, it was the testimony of plaintiff's witnesses that some of the imported machines were sold to other than shoe manufacturers. The literature on the instant merchandise states that the cutters may be used in the garment, foam cutting, packaging, and rubber industries and that the cutters may be used for "all types of multi-ply cutting." The cutters will cut any material which requires 20 to 30 tons of pressure, as will the cutters manufactured by the domestic manufacturers such as Schwabe, Ormont, Sandt, and Shoen.

Considering the pertinent factors relied upon in prior cases and those which are present in this case, we conclude that the imported beam cutters are not of a special class or kind commonly known as shoe machinery. Nor does the holding of the incorporated case compel a finding in favor of plaintiff, as it can be distinguished from the case now before us. *C. H. Powell Company* v. *United States*, 63 Cust. Ct. 302, C.D. 3912, was decided in 1969 and involved merchandise imported in 1963 and 1964 from Denmark. The merchandise was a Pedersen rapid beam cutting press and parts therefor. The decision for the plaintiff that the merchandise was shoe machinery for tariff schedule purposes was based on a finding that plaintiff had proved a

prima facie case that the imported merchandise, imported and sold solely to shoe manufacturers, was chiefly used in the manufacture of leather shoes.

The evidence before this court is that the nature of the industries to which beam cutters are sold has changed within this decade. While at one time beam cutters were used almost exclusively in the shoe industry, they are now used in a variety of industries and the use in the shoe industry does not exceed that of all other industries combined.

The issue in this case is not whether the imported merchandise is chiefly used as shoe machinery, but whether it belongs to a class or kind of machinery chiefly used as shoe machinery. In the *Powell* case, the court did not have before it any evidence of the use of similar machinery in this country at the time of importation. In the instant case, there is ample evidence that machines of the same class or kind as the imported merchandise are used in a variety of industries and that the use in the shoe industry is not the chief use. Defendant's witnesses testified to use of similar beam cutters in the automobile industry, in the garment industry, and, in fact, in all types of multiple cutting situations.

Additionally, the defense witness in *Powell* was unable to recall that he had ever seen a Pedersen beam cutting press in operation. In the instant case, defendant's witnesses were familiar with the imported machines, had seen them at trade shows, had seen them in operation in factories side by side with domestically manufactured general purpose beam cutters, and were of the opinion that they were interchangeable with other machines. This testimony is sufficient to rebut a prima facie case, if one has been made out by the plaintiff.

Plaintiff relies on the holding in *Maher-App & Co.* v. *United States*, 57 CCPA 31, C.A.D. 973 (1969), for the proposition that the class or kind of merchandise to be considered is not the broad, general class of merchandise, but a particular class. The merchandise being considered was twine held dutiable as twine under par. 1005(b) of the Tariff Act of 1930, as modified by GATT, T.D. 51802, rather than binding twine dutiable under par. 1622 of the same act. In *Maher-App*, our appeals court held that where the plaintiff has not met the burden of proof of establishing that the merchandise belonged to a class or kind of twine chiefly used as binder twine having certain indispensable identifying characteristics, customs classification must be upheld. The court cited with approval the finding of the court below to the effect that:

> [I]t appears that the requisite yield of twine per pound is a major characteristic of binder twine as a class, absent which such twine will not be acceptable for the uses testified to by plaintiffs'

> witnesses. In short, the proper length per pound is an indispensable identifying characteristic of the class of twine known as binder twine. In light of this fact, the length of the instant twine becomes of central importance, not arising from the necessity of demonstrating that these particular shipments were used on the farm, but rather from the necessity of showing that the instant twine possesses those essential characteristics which the class possesses. In short, plaintiffs' failure of proof was in respect to showing that the instant twine belonged to the class of acknowledged binder twine * * *. [57 CCPA at 35.]

Based on the holding of *Maher-App*, it was incumbent on plaintiff to bring before the court proof of those indispensable identifying characteristics of the imported merchandise which set it apart from general purpose beam cutters and establish a special class of merchandise to which the imported machines belong. This plaintiff has failed to do. It is not enough for plaintiff to establish the chief use of the imported merchandise. *Bangor & Aroostook Railroad Co.* v. *United States*, 20 CCPA 96, T.D. 45724 (1932); Sturm, "A Manual of Customs Law," pages 221–22, and the cases cited therein.

In *United States* v. *Baltimore & Ohio R. R.*, 47 CCPA 1, C.A.D. 719 (1959), the court held that various small, after-dinner or demitasse china cups and saucers were properly classifiable as ornamental articles rather than as decorated china tableware, based on evidence which established that the merchandise had been particularly designed and marketed to appeal to those purchasers indulging in the fad of cup and saucer collection, that none of the other articles usually required for after-dinner coffee, such as creamer and sugar bowl, were imported contemporaneously, and that the merchandise was not displayed with dish sets, but rather as individual items and not in the area of the store in which dinner sets were sold. It is obvious that this case was controlled by the peculiar circumstances surrounding it. Plaintiff cannot point to similar circumstances in the instant case. The merchandise before the court is advertised with general purpose beam cutters, it is used in the same manner and in the same industries in which general purpose beam cutters are used, and plaintiff has introduced no evidence that the shoe industry is the sole market at which the merchandise is targeted. To the contrary, plaintiff has attempted to sell the beam cutters to various other industries, with some success.

In *United States* v. *Hudson Shipping Co.*, 49 CCPA 92, C.A.D. 802 (1962), the court considered a conveyor used to transport boxes from one section of a shoe factory to another and found that it did not constitute shoe machinery. Our appellate court found it to be no different from similar conveyors used in many other types of factories,

with no features which particularly adapted it to the shoe industry. The court considered at length the legislative history of the term "shoe machinery" and concluded that Congress, in using that term, "intended to cover specialized machines particularly adapted for and used in the manufacture of shoes."

Plaintiff also attempts to rely on the 1929 "Summary of Tariff Information," schedule 5, page 2254, which states:

> In shoe machinery are included machines for cutting and sewing shoes and for other manufacturing operations. Many of these are highly specialized.

We do not interpret this language to evidence an intent on the part of Congress that any machines for cutting and sewing shoes are included in shoe machinery. An electric scissors which cuts leather and could be used to cut the parts of a shoe would not be deemed to be shoe machinery unless the importer could show that this particular scissors, because of its particular identifying characteristics, belonged to a class or kind of scissors chiefly used as shoe machinery. Similarly, a sewing machine which would have the ability to sew the various parts of a shoe would not be classified as shoe machinery unless similar evidence was before the court.

Conclusion

Plaintiff has failed to establish that the chief use of the imported beam cutters was as shoe machinery at the time of importation into the United States. The presumption of correctness attaching to the classification by customs has not been overcome, and the action is dismissed.

Judgment will enter accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/222	Re, C. J. November 27, 1978	C. J. Tower & Sons of Buffalo, Inc.	R69/500	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is the value found by appraising official as reflected on the invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079).	Buffalo Studebaker automobiles and optional equipment
R78/223	Newman, J. November 27, 1978	Ernest Lowenstein, Inc.	R64/14934, etc.	Export value	Appraised values less 15%	U.S. v. Ernest Lowenstein, Inc. (A.R.D. 325)	New York Glass stones, pendants, beads, etc.
R78/224	Newman, J. November 17, 1978	Ernest Lowenstein, Inc.	R64/16673, etc.	Export value	Appraised values 15% less	U.S. v. Ernest Lowenstein, Inc. (A.R.D. 325)	New York Glass stones, pendants, beads, etc.

Order Correcting Clerical Error

November 16, 1978

Mego Corp. *v.* United States, Court Nos. 73–3–00793, etc.—
BOXING GLOVES.—Abstract P78/117. Plaintiff's motion to correct clerical error granted; decision and judgment dated September 29, 1978, amended to read "Said Model No. 95 items are properly dutiable as boxing gloves under item 735.05 Tariff Schedules of the United States, at the rates of 9 or 7.5 percent ad valorem, depending upon the date of entry, T.D. 68/9."

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U.S. Customs Service

Customs Court

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